IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 802 of 1996

Between:

Hospital Road Small Traders Association,

rep. by its President Md. Jeelani Basha,

S/o. Gulam Dastagiri Saheb
Gudur Town, Nellore District.

..... PETITIONER

AND

1 The Commissioner of Endowments, Govt. of

Andhra Pradesh. Tilak Road, Hyderabad.
2 The District Collector, Nellore.
3 Gudur Municipality, rep. by its Commissioner, Gudur, Nellore District.
4 The Mandal Revenue Officer, Gudur Mandal, Nellore District.
5 Sri Dharmaraju Swamy Temple, rep. by its Executive

Officer Gudur Town Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the inaction of the respondents 1 and 2 in considering the various representations submitted by the petitioner for construction of shopping complex in place of shops in possession and enjoyment of the Members of the petitioner association in Survey No. 577/4-2A and 24A of East Gudur, Nellore District and the further action of the respondents 3 and 4 in seeking to evict the traders who are the members of the petitioner association from their shops and demolish the same as illegal, arbitrary and unjust and consequently direct the respondents 1 and 2 consider the representations of the petitioners made on behalf of the members for construction of shopping complex in the land in Survey No.

577/4-2A and 2A4 and pending the same direct the other respondents not to evict the members of the petitioner association from their shops situated in the said land nor to demolish the same

Counsel for the Petitioner: MR.P.SRIDHAR REDDY

Counsel for the Respondents 1,2 & 4: GOVERNMENT PLEADER FOR ENDOWMENTS

Counsel for the Respondents: MR.METTACHENDRA SEKHAR RAO

The Court made the following:

ORDER:

This writ petition is filed seeking a writ of Mandamus to direct the respondents 1 and 2 to consider the representations submitted by the petitioner-association for construction of a shopping complex in the piece of land covered by Sy.No.577/4-2A and 24A of East Gudur, Nellore District, adjoining Dharmarajuswamyvari temple and further, to direct the respondents not to take any steps for eviction without due process of law.

The petitioner-Hospital Road Small Traders Association is in occupation of a piece of land admeasuring Ac.0.78 cents in Sy.No.577/4-2A and 24A of East Gudur Village, Nellore District. It is the case of the petitioner that the members of the petitioner-association are in occupation of small portions of land in the said survey number and are doing petty businesses like kirana shops, sweet stalls, tea-stall etc. Regarding the very piece of land, there was a dispute between the revenue department and the endowments department. The endowments department filed O.S.No.162 of 1998

on the file of the Sub-Court, Gudur, seeking declaration of title to the said land in question, but the said suit ended in compromise between the revenue department and the endowments department. Thereafter, proceedings came to be issued by the District Collector on 23.03.1990 in Rc.B2.5627/90. The said proceedings indicate that the revenue authorities have agreed to hand over this piece of land to the endowments department subject to certain conditions, which are as follows: -

> "1. The layout and designs of the proposed shopping complex shall get the prior approval of the Collector.
>
> 2. The Existing shop owners shall be considered for allotment of shops on priority basis.
>
> 3. The Civil suit shall be withdrawn by the Endowments Department forthwith."

Further, it is the case of the petitioner-association that though there was a proposal to construct a shopping complex in the said land and to allot to the same to the members of the petitioner-association on preferential basis, no steps are being taken to construct such a complex. Some copies of the representations alleged to have been submitted to the Commissioner of endowments department were filed in the material papers. This writ petition is filed on the ground that though there was a proposal to construct a shopping complex in the said land but no steps have been taken till now and further, the respondents 3 to 5 were taking steps to evict the petitioners from the said land.

No counter-affidavit is filed on behalf of the respondents 1 to 5. But, however, the fifth respondent has filed counter-affidavit stating that the members of the petitioner-association are in possession of said piece of land and doing petty businesses.

Though one of the conditions in the proceedings dated 23.03.1990 was for allotment of shops to the members of the petitioner-association in the proposed shopping complex but at the same time the petitioner-association cannot seek any direction by way of writ of Mandamus for construction of a shopping complex by the first respondent. It is for the respondent authorities to decide whether construction of such a complex is feasible, economical, etc. This Court cannot direct the respondents to construct a shopping complex in the said land, but, in any event as it is stated in the affidavit, filed in support of the writ petition, that the members of the petitioner-association have submitted a series of representations for constructing a shopping complex in the said land and also in view of the fact that no counter-affidavit is filed on behalf of the respondents 1 to 4, I dispose of the writ petition permitting the petitioners to file representation before the first respondent, if they have any grievance, within a period of four weeks from the date of receipt of a copy of this order. If any such representation is filed, the first respondent shall consider the same and communicate the decision to the petitioner-association. Further, it is needless to observe that the members of the petitioner-association, who are in possession of the said piece of land by doing petty businesses, shall not be evicted as otherwise under due process of law.

Subject to the above observations, the writ petition is disposed of. No order as to costs.

_____ R.SUBHASH REDDY, J

27.01.2005

DR

To

1 The Commissioner of Endowments, Govt. of

Andhra Pradesh. Tilak Road, Hyderabad.
2 The District Collector, Nellore.
3 The Commissioner, Gudur Municipality, Gudur, Nellore District.
4 The Mandal Revenue Officer, Gudur Mandal, Nellore District.
5 The Executive Officer, Sri Dharmaraju Swamy Temple,

Gudur Town Nellore District.

6 2CCs to Government Pleader for Endowments, High Court

Buildings, Hyderabad. (OUT)

7 2CD copies